No. 11653.

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

OSCAR SCHATTE, RAYMOND E. CONAWAY, ANDREW M. ANDERSON, CHARLES L. DAVIS, HARRY BEAL, ARTHUR DJERF, EWALD K. ALBRECHT, HARRY L. TALLEY, HARRY DAVIDSON, JOHN L. KIERSTEAD, THOMAS W. HILL, LLOYD C. JACKSON, ALFRED J. WITHERS, JOHN H. ZELL, and EDWARD DERHAM, on Behalf of Themselves and All Others Similarly Situated,

Appellants,

vs.

INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE OPERATORS OF THE UNITED STATES AND CANADA, *et al.,*

Appellees.

Brief of Appellees Association of Motion Picture Producers, Inc., Loew's Incorporated, Paramount Pictures Inc., Warner Bros. Pictures, Inc., Columbia Pictures Corporation, Samuel Goldwyn Productions, Inc., Republic Productions, Inc., Hal E. Roach Studio, Inc., Technicolor Motion Picture Corporation, Twentieth Century Fox Film Corporation, R.K.O. Radio Pictures, Inc., and Universal Pictures Company, Inc.

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Statement of the Case.

By the allegations of their amended complaint, appellants seek a declaration of their rights under a purported collective bargaining agreement between the Carpenters'

Union and appellee Motion Picture Companies and under an arbitration award alleged to have been made pursuant to said agreement. Stripped of legal conclusions, evidentiary matter and other irrelevant matter, the dispute alleged to exist between appellants and appellees is simple. Appellants allege that between October 15 and 25, 1945, the Carpenters' Union, the IATSE, and the Motion Picture Companies agreed that studio work should be assigned to members of the Carpenters' Union and the IATSE in accordance with an arbitration award to be issued within 60 days thereafter; that on December 26, 1945, and within the 60-day period, the arbitrators awarded "erection of sets on stages" to the IATSE; that the Motion Picture Companies interpreted such award as meaning that sets on stages were to be constructed by members of the IATSE; that such interpretation was erroneous and was made because of pressure from and a conspiracy with the IATSE; that in August, 1946, long after the expiration of the 60-day period within which they were authorized to act, the arbitrators issued a "clarification" in which they interpreted "erection" as meaning "assemblage" instead of "construction"; that the interpretation placed by the Motion Picture Companies upon the words "erection of sets on stages" was violative of their agreement and deprived plaintiffs, as third party beneficiaries under such agreement, of civil rights guaranteed by the Constitution and statutes of the United States. Stated more briefly, the controversy set forth in the complaint is a controversy over the meaning of a purported agreement between the Carpenters Union, the IATSE and the Motion Picture Companies. The District Court so recognized the issue and appellants adopted the District Court's statement as their Statement of the Case. (App. Br. p. 6.)

I.

Jurisdiction of the District Court Cannot Be Predicated Upon the Claim That This Case Arises Under the National Labor Relations Act.

1. To be a Case Arising Under a Law of the United States, a Suit Must Involve a Real and Substantial Dispute Respecting the Validity, Construction, or Effect of Such Law of the United States, Upon the Determination of Which the Result Depends.

Shulthis v. McDougal, 225 U. S. 561, 569:

"A suit to enforce a right which takes its origin in the laws of the United States is not necessarily, or for that reason alone, one arising under those laws, for a suit does not so arise unless it really and substantially involves a dispute or controversy respecting the validity, construction or effect of such a law, upon the determination of which the result depends."

Gully v. First National Bank, 299 U. S. 109, 112:

"How and when a case arises 'under the Constitution or laws of the United States' has been much considered in the books. Some tests are well established. To bring a case within the statute, a right or immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the plaintiff's cause of action. (Citing cases.) *The right or immunity must be such that it will be supported if the Constitution or laws of the United States are given one construction or effect, and defeated if they receive another."*

2. **The Complaint Does Not Set Forth Any Facts Even Purportng to Show a Violation of Any of the Provisions of the National Labor Relations Act.**

(a) The National Labor Relations Act Does Not Require That Employers or Unions Enter into Collective Bargaining Contracts, Much Less That They Perform Them When Made.

Appellants cite only Section 7 of the Act:

> "Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargaining collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection."

The mandate of this Section implemented by Section 8(5) of the Act (which makes it an unfair labor practice for an employer to refuse to bargain collectively) is that employers are required to *negotiate* in good faith with respect to wages, hours and working conditions; they are not required to reach an agreement.

Report No. 573, Senate Committee on Education and Labor, 74th Congress, 1st Sess., page 12:

> "The Committee wishes to dispel any possible false impression that this bill is designed to compel the making of agreements or to permit governmental supervision of their terms. It must be stressed that the duty to bargain collectively does not carry with it the duty to reach an agreement, because the essence of collective bargaining is that either party shall be free to decide whether proposals made to it are satisfactory."

N.L.R.B. v. Jones & Laughlin Steel Corp., 301 U. S. 1, 45:

> "The Act does not compel agreements between employers and employees. It does not compel any agreement whatever. It does not prevent the employer 'from refusing to make a collective contract and hiring individuals on whatever terms' the employer 'may by unilateral action determine.' "

Lund v. Woodenware Workers Union (D. C., Minn.), 19 Fed. Supp. 607, 609:

> "In fact, it seems reasonably clear that Section 159 (a), 29 U.S.C.A., does not necessarily contemplate the making of a contract between the employer and employees, nor does it seek to compel an employer to make any contract with the designated representatives of the majority."

Contrary to any claim that the appellee companies have refused to negotiate with appellants' representatives, appellants claim that they have so negotiated and that a contract has resulted. Appellants in their own words seek no more and no less than a construction of this contract.

> "This suit for declaratory relief is based upon said actual controversy, that involves the interpretation of the terms and provisions of said contracts and arbitration awards, and clarification thereof, and the determination of the rights and obligations of each and all of the respective parties hereto thereunder." (App. Br. p. 30.)

Plaintiffs quote, apparently with approval, the District Court's statement of the issues:

> "* * * we have an action in which private individuals ask this court to construe their rights under a con-

tract negotiated on their behalf by a labor union, and to protect such rights from interference with or invasion by other persons acting individually or in conspiracy with each other." (App. Br. p. 25.)

(b) If a Violation of Section 7 of the National Labor Relations Act Is Set Forth in the Complaint, a Charge of Unfair Labor Practice Is Made and Exclusive Jurisdiction Thereof Rests With the N.L.R.B.

This exclusive jurisdiction is provided for in no uncertain terms by Section 10(a) of the N.L.R.A.:

> "The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise."

It has been held in numerous cases that the District Courts, even in diversity cases, have no jurisdiction to hear such a cause. *Myers v. Bethlehem Corp.* (1938), 303 U. S. 41, 48:

> "The District Court is without jurisdiction to enjoin hearings because the power 'to prevent any person from engaging in any unfair practice affecting commerce,' has been vested by Congress in the Board and the Circuit Court of Appeals, and Congress has declared: 'This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.' "

Lund v. Woodenware Workers, supra, 19 Fed. Supp. 610:

"* * * but in any event, it seems reasonably clear that the National Labor Relations Board is vested with exclusive jurisdiction in all matters arising under this act, except as may be specifically granted to the courts, with reference to the enforcement of cease and desist orders, subpoenas, and the consideration of appeals."

3. The Fact That the Contract Which Appellants Seek to Have Construed Was Executed as a Result of Negotiations Required by the National Labor Relations Act Is Not Sufficient to Make This a Case Involving the Validity, Construction, or Effect of That Act, and, Consequently, Does Not Make It a Case Arising Thereunder.

(a) The Federal Courts Have So Held Where the Parties Have Attempted to Found Jurisdiction on the Fact That a Collective Bargaining Contract Made Pursuant to Negotiations Required by the N.L.R.A. Was Involved.

In *Lund v. Woodenware Workers, supra,* an employer sought to enjoin minority employees from interfering with a contract made with the representative of the majority. The defendants moved to quash plaintiffs' application for a temporary injunction on two grounds; the first that the Court lacked jurisdiction because there was no Federal question involved and the second that the Norris-LaGuardia Act had not been complied with. The Court

found it unnecessary to discuss the second ground inasmuch as it found no Federal question to be involved. (Page 609):

> "A reading of the Wagner Act impels the view that it was passed primarily to eliminate unfair labor practices on the part of the employer, to guarantee to the employees the right of self-organization, and to secure the right to bargain collectively through representatives of their own choosing. There is no express provision in the act which seeks to affect, limit, or curb unfair practices on the part of labor towards the employer. Unquestionably, the contract that plaintiff contends he has entered into with the representatives of the majority of his employees may be entirely valid, *but the mere fact that the employer has made a valid contract with his employees does not, of itself, give rise to any justiciable controversy in federal court under the act.* There is no intimation in the act that, merely because an employer has entered into a contract with a majority union, Congress assumed to vest jurisdiction in United States courts to protect or safeguard the integrity of such contract."

In *Blankenship v. Kurfman* (C. C. A. 7, 1938), 96 F. (2d) 450, members of a union having a contract made pursuant to the requirements of the N.L.R.A. commenced action against another union to enjoin interference with the performance of said contract by plaintiffs and the other members of their union. Plaintiffs contended that defendant's action deprived plaintiffs of rights and privileges secured by the N.L.R.A. The Court said:

> "And we find no provision in the act which can be construed as intending to create rights for em-

ployees which can be enforced in federal courts independently of action by the National Labor Relations Board. Consequently, we hold that the contract in the instant case between the plaintiffs and their employer did not, by force of the National Labor Relations Act, create a right in the plaintiffs which was secured to them 'by the Constitution or laws of the United States.' Consequently, the alleged unlawful interference by the defendants with the plaintiffs' contractual rights did not give a cause of action of which a federal court would have jurisdiction in the absence of diversity of citizenship."

The same question was involved in *Amalgamated Meat Cutters & Butchers Workmen of North America, Local No. 207, v. Spreckles* (C. C. A. 9, 1941), 119 F. (2d) 64, where the union having a contract made pursuant to negotiations required by the N.L.R.A., sought to enjoin interference by a regional director of the National Labor Relations Board who was alleged to be acting outside of his authority. The District Court declined jurisdiction and was affirmed. (Page 65):

"Amalgamated admits that no provision of the National Labor Relations Act, 29 U. S. C. A. §151 *et seq.*, is violated and it does not claim that Spreckels' acts violated any other United States statute or the Federal Constitution. Since no diversity of citizenship is shown nor the amount of damages threatened, we can find no ground for jurisdiction in the district court. Amalgamated's forum, if any, is in one of the state courts."

(b) The Fact That a Collective Bargaining Agreement Was Made Pursuant to Negotiations Required by the Railway Labor Act, Which Uses Language Substantially Similar to Section 7 of the National Labor Relations Act, Has Been Held Not to Result in There Being a Federal Question in a Suit to Construe or Enforce Such a Contract.

In *Malone v. Gardner* (C. C. A. 4), 62 F. (2d) 15, plaintiffs sued to enjoin union officers from interfering with a contract made by plaintiffs' union with a railroad company as a result of negotiations under the Railway Labor Act. Defendants moved to dismiss upon the ground that the Court was without jurisdiction. The Circuit Court of Appeals affirmed the District Court's order granting the motion to dismiss:

> "When these established rules are applied to the case stated in the bill, it will be seen that the construction or applicability of the Railway Labor Act is not really involved in this case. The suit relates to an agreement of employment whereby the plaintiff acquired certain contract rights of value; but neither the agreement nor the rights secured thereby were founded upon the Labor Act, nor is their construction or effect in any way affected thereby."
>
> * * * * * * * *
>
> "The decision of this case, however, is based on the settled rule that the federal courts have not been given jurisdiction to try all actions arising out of agreements between carriers and their employees, or to require them to respect and maintain their agreements."

Delaware, L. & W. R. Co. v. Slocum (D. C., N. Y.), 56 Fed. Supp. 634, was an attempt on the part of an employer to have a judicial determination of a jurisdictional question arising out of its having made collective bargaining agreements, pursuant to negotiations required by the Railway Labor Act, with two unions, each of which claimed their agreements covered the same work. After removal from a state court, defendant sought to dismiss and plaintiff to remand. The District Court remanded the case. (Page 636):

> "A suit does not arise under the laws of the United States unless it 'really and substantially involves a dispute or controversy respecting the validity, construction, or effect of some law of the United States, upon the determination of which the result depends.' (Citing cases.) It is patent from the complaint that this suit does not involve the 'validity, construction, or effect' of any federal statute, but rather seeks the determination of its rights or liabilities under certain contracts."

(c) An Action Brought to Enforce a Right Under a Contract Which Is Made As the Result of Rights Granted Under the Patent Laws to Reserve Royalties Upon Sale or License of Patented Articles Is Not an Action Arising Under the Laws of the United States.

Wade v. Lawder, 165 U. S. 624;

Henry v. A. B. Dick Co., 224 U. S. 1, 14;

Odell v. F. C. Farnsworth Co., 250 U. S. 501, 504.

(d) An Action to Enforce a Right Under a Contract Which Is Made as the Result of Rights Granted Under the Copyright Laws to Reserve Royalties Upon the Sale or License of Copyrighted Material Is Not an Action Arising Under the Laws of the United States.

Silver v. Holt (C. C.), 84 Fed. 809;

Danks v. Gordon (C. C. A. 2), 272 Fed. 821, 827.

(e) The Cases Cited by Appellants Do Not Support a Contrary Rule.

Steele v. Louisville and Nashville R. R. Co., 323 U. S. 192, merely held that under the Railway Labor Act the statutory representative of a craft had a duty to represent those within the class without discrimination. This duty was found in the language and purpose of the Act which gives such representatives exclusive powers and guarantees to all railway employees the right to "bargain collectively through representatives of their own choosing."

The Federal right upon which jurisdiction was based was derived directly from the Act, which as we have seen, in common with the National Labor Relations Act, guarantees the right of representation, but does not require the making of contracts nor provide for the enforcement or construction of those which are made.

A. F. of L. v. Tom Watson (1946), 327 U. S. 582, held only that the right to bargain collectively granted by Section 7 of the National Labor Relations Act might include the right to bargain for a closed shop and, consequently, that a right derived from a Federal law could be

threatened by a state constitutional amendment outlawing the closed shop. (Page 591):

> "We do not pass on the question whether the District Court had jurisdiction under §24(1) or §24(14) of the Judicial Code. For it is the view of a majority of the Court that jurisdiction is found in §24(8) of the Judicial Code, 28 U. S. C. §41(8), which grants the federal district courts jurisdiction of all 'suits and proceedings arising under any law regulating commerce.' As we have said, the bill alleges a conflict between the Florida law and the National Labor Relations Act. The theory of the bill is that labor unions, certified as collective bargaining representatives of employees under that Act, are granted as a matter of federal law the right to use the closed-shop agreement or, alternatively, *that the right of collective bargaining granted by that Act includes the right to bargain collectively for a closed shop.* Whether that claim is correct is a question which goes to the merits. It is, however, a substantial one. And since the right asserted is derived from or recognized by a federal law regulating commerce, a majority of the Court, conclude that a suit to protect it against impairment by state action is a suit 'arising under' a federal law 'regulating commerce.'"

The Court did not even remotely suggest that the National Labor Relations Act went any farther than to guarantee the right to *bargain for* a closed shop and the case is no authority whatsoever for the proposition that collective bargaining agreements made pursuant to this bargaining requirement are subject to enforcement or construction as Federal questions.

4. **The Fact That the Enactment of Sections 301(a) of the Labor-Management Relations Act of 1947, Amending the National Labor Relations Act Expressly to Provide for District Court Jurisdiction in Certain Cases Arising Under Collective Bargaining Contracts Made Pursuant to Negotiations Required by the National Labor Relations Act, Was Deemed Necessary by Congress Is Persuasive That Prior Thereto the National Labor Relations Act Did Not so Provide and Such Cases Could Not be Maintained in the District Court in the Absence of Diversity of Citizenship.**

(a) Legislative Interpretation Manifested in Later Legislation Is Entitled to Weight in Determining the Meaning of Prior Enactments. Where an Amendment Would Be Unnecessary If the Law Had the Same Meaning Before Amendment the Act of the Legislature in Enacting the Amendment Is an Interpretation of the Statute as Not Previously Providing What Is Provided for by the Amendment.

The United States Supreme Court clearly recognized this principle in *Neuberger v. Commission* (1940), 311 U. S. 83, where an interpretation of the Revenue Act of 1932 as allowing deduction of individual losses from similar partnership gains was supported by the legislative history of subsequent Revenue Acts. The basic question involved was whether, under the 1932 Act, partnership gains and losses retained their identity as such in the income of the individual partners. The Court held that they did and in support of this holding pointed out that in 1933 Congress amended the Revenue Act so as to deny the retention of such identity and in so doing recognized that it was changing the law. The situation covered by the 1933 amendment was the converse of that involved in

the case, that is, the identity of partnership losses (not gains) was involved; nevertheless, the amendment and attendant legislative history were taken as applicable to the entire question of both gains and losses. The Court said:

> "Our conclusion that this is the proper construction of §23(r)(1) is confirmed by the action of Congress since 1932. In 1933 Congress amended §182(a) of the Revenue Act of 1932 to deny to individual partners deductions for partnership losses which had been disallowed in the partnership return, the converse of the instant case. 48 Stat. 195, 209." (p. 89.)

At this point the Court quoted the following from the legislative history of the 1933 Act.

> "In Senate Finance Committee Report Number 114 (73rd Congress, 1st Sess.) accompanying the bill, it is stated at page 7:
>
> "'Subsection (d) amends the partnership provisions of existing law. Under existing law the individual members of a partnership are entitled to reduce their individual net incomes by their distributive shares of a net loss incurred by the partnership.'" (f. n. 3, p. 90.)

The Court, relying also on the subsequent act of Congress in passing the Revenue Act of 1938, summarized its entire argument based on legislative interpretation as follows:

> "That the amendment of 1933 changed and the Revenue Act of 1938 restored the law of 1932 as we have explained it is plain from the legislative history of the two Acts and of §23(r)(1)." (p. 90.)

In *Newell v. Baltimore & O. R. Co.* (1910), 181 Fed. 698, the Court held that an action brought in the Federal Circuit Court in Pennsylvania by a Pennsylvania citizen against a Maryland corporation should be dismissed for lack of jurisdiction when it was revealed by amendment to the complaint that the case arose under the Federal Employers Liability Act. The Act had been amended subsequent to the filing of the complaint to give jurisdiction to the Circuit Court in the district of the residence of the plaintiff as well as that of the defendant, but at the time the suit was brought it was silent on the question of the proper court in which to sue. The Judiciary Act in effect provided that except where jurisdiction was based on diversity of citizenship alone no suit should be brought against any person "in any other district than that whereof he is an inhabitant." The fact that the Employer's Liability Act was amended expressly to provide for jurisdiction in the district of the plaintiff's residence in lieu of remaining silent on the subject was relied upon by the Court as establishing that the Act before amendment made no special jurisdictional grant and suits thereunder were required to be brought in compliance with the requirements of the Judiciary Act.

> "The very fact that such enactment was deemed necessary by Congress is persuasive that prior thereto such action could only be brought in accordance with the acts conferring jurisdiction upon the Circuit Courts of the United States, to wit, . . ." (p. 701.)

Board of Com'rs of Sweetwater County, Wyo., v. Bernardin, C. C. A. 10 (1934), 74 F. (2d) 809, 813:

> "If the gross product tax was a tax on the realty, then it was a lien upon such realty and this amendment was wholly unnecessary. It therefore amounts to a legislative construction of section 3, art. 15, and the gross product tax statute to the effect that the tax is upon the severed product. A construction of a statute by the Legislature, as indicated by a subsequent enactment, is entitled to consideration as an aid in interpreting such statute." (p. 813.)

Mackay v. Commissioner of Internal Revenue, C. C. A. 2 (1938), 94 F. (2d) 558, 561:

> "The enactment in 1924 of section 302(d), 26 U. S. C. A. §411 note, is an indication that Congress then recognized the limited scope of section 302(c), or, to say the least, doubted that subdivision (c) included cases of this kind" (p. 561).

United States v. Board of Com'rs., D. C. N. D., Okla. (1939), 29 F. Supp. 270, 274:

> "If the Act means what defendants contend, then the Amendment of May 19, 1937, was unnecessary. It appears that the Amendment of May 19, 1937, was enacted as it was the desire of Congress to restrict and limit the Act of June 20, 1936, to homesteads of not exceeding one hundred sixty acres. This Court must assume that Congress intended what it plainly said, and that the Amendment was enacted for the definite purpose of changing the existing law" (p. 274).

(b) The Legislative History of Section 301(a) of the Labor-Management Relations Act Establishes Beyond Doubt That by Its Enactment Congress Intended to Create Jurisdiction Not Theretofore Existing.

The Senate Committee on Labor and Public Welfare, in outlining the purposes of its amendments to the Act, and to Section 301(a) in particular, said, in its Report No. 105 dated April 17, 1947:

> "Consequently, to encourage the making of agreements and to promote industrial peace through faithful performance by the parties, collective agreements affecting interstate commerce *should be enforceable in the Federal Courts.* Our amendment would provide for suits by unions as legal entities and against unions as legal entities in the Federal Courts in disputes affecting commerce."

That Congress was amply aware that it was greatly increasing the jurisdiction of the Federal District Courts and intended so to do is evidenced by the fact that it was well apprised of that circumstance by Senator Murray who on April 25, 1947, opposing the Bill in the Senate said:

> "Section 301 of title II of the bill gives the Federal district courts broad jurisdiction to entertain suits for breach of collective-bargaining contracts in industries affecting interstate commerce, regardless of the amount in controversy and of the citizenship of the parties. This section permits suits by and

against a labor organization representing employees in such industries, in its common name, with money judgments enforceable only against the organization and its assets.

"The Federal courts have always had jurisdiction to entertain suits for breach of collective-bargaining contracts, and have awarded money damages where the amount in controversy fulfills the present $3,000 requirement and diversity of citizenship exists.

"Every district court would still be required to look to State substantive law to determine the question of violation. This section does not, therefore, create a new cause of action, but merely makes the existing remedy available to more persons by removing the requirements of amount in controversy and of diversity of citizenship where interstate commerce is affected.

Burden on Courts

"The abandonment of the present amount in controversy and diversity of citizenship requirements is an *unwise departure from existing law,* which would impose a needlessly increased burden upon the Federal courts, already weighted down with litigation. . . ." (Congressional Record p. 4153.)

III.

The Jurisdiction of the District Court in This Case Is Not Affected by the Enactment of the Labor-Management Relations Act of 1947.

1. The Labor-Management Relations Act, While Conferring Jurisdiction Upon the District Courts in Actions by Labor Organizations or Employers for Violation of Contracts Between Them Does Not Confer Jurisdiction Upon This Court Over Actions by Employees Asserting Rights Under Such Contracts.

(a) Section 301(a) of the Labor-Management Relations Act.

"Sec. 301. (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

(b) The Legislative History of This Section Indicates That It Was Intended to Apply Solely to Actions Brought by Labor Organizations or Employers.

(i) *The Deletion of Language Carrying a Wider Import From the House Version of the Bill Indicates a Congressional Intent Not to Give Jurisdiction Beyond That Which the Language Finally Used Imports: i. e., Jurisdiction of Suits Between an Employer and a Labor Organization or Between Labor organizations.*

The text of Section 302(a) of the House version reads as follows:

"Section 302(a). An action for or proceeding involving a violation of an agreement between an employer and a labor organization, or other representative of employees, may be brought by either party in any district court of the United States having jurisdiction of the parties, without regard to the amount in controversy, if such agreement affects commerce or the court otherwise has jurisdiction of the cause."

The omission of the words "or other representative of employees" in the Act as finally passed can hardly be construed as other than a deliberate withholding of jurisdiction in cases brought by representatives of employees other than labor organizations.

(ii) *The Committee and Conference Reports Clearly Indicate That Congress Meant to Limit Jurisdiction Under This Section to Actions Brought by Labor Organizations or Employers.*

After considering the advisability of recommending the adoption of the Senate bill, the Senate Committee on Labor and Public Welfare in its Report No. 105, dated April 17, 1947, made the following statement with reference to Section 301(a):

"Consequently, to encourage the making of agreements and to promote industrial peace through faithful performance by the parties, collective agreements affecting interstate commerce should be enforceable in the Federal Courts. Our amendment would provide for suits *by unions* as legal entities and *against unions* as legal entities in the Federal Courts in disputes affecting commerce."

The Senate Conferees explained the final form of Section 301(a) to the Senate on June 5, 1947 in the following manner (Congressional Record p. 6602):

> "Section 301 differs from the Senate bill in two respects. Subsection (a) provides that violation of contracts *between labor organizations* as well as *between a labor organization and an employer* may be brought in the Federal Courts."

The House Conferees, in reporting the bill back to the House on June 3, 1947, made a similar statement (page 6470):

> "Section 302 of the House bill and Section 301 of the Senate amendment contained provisions relating to *suits by and against labor organizations* in the courts of the United States. The conference agreement follows in general the provisions of the House bill with changes therein hereafter quoted."

(iii) *The House Debate Quoted by Appellants on Page 63 of Their Opening Brief Is Not Properly a Part of the Legislative History of Section 301(a), and Even if It Were, Is Not Controlling as to Its Meaning.*

The section under discussion by Mr. Barden and Mr. Chase was Section 302(a) of the House Bill. As already pointed out, the wording then used was much broader than that finally adopted and no discussion of its meaning could possibly be pertinent to the meaning of Section 301(a).

In the face of the considered reports above quoted taking the opposite view, the discussion between Messrs. Barden, Chase and Hartley is entitled to no consideration. It is a well settled rule of statutory construction that

while the debates in Congress are of little, if any, value in determining the meaning of a statute except possibly to show the general purpose of the act, reports of committees and of conferences are entitled to considerable weight. *Duplex Company v. Deering* (1920), 254 U. S. 443, 474:

> "By repeated decisions of this court it has come to be well established that the debates in Congress expressive of the views and motives of individual members are not a safe guide, and hence may not be resorted to, in ascertaining the meaning and purpose of the law-making body. *Aldridge v. Williams,* 3 How. 9, 24; *United States v. Union Pacific R. R. Co.,* 91 U. S. 72, 79; *United States v. Trans-Missouri Freight Association,* 166 U. S. 290, 318. But reports of committees of House or Senate stand upon a more solid footing, and may be regarded as an exposition of the legislative intent in a case where otherwise the meaning of a statute is obscure. *Binns v. United States,* 194 U. S. 486, 495."

Imhoff-Berk Silk Dyeing Co. v. U. S. (1930), 43 F. (2d) 836, 837:

> "While legislative debate, partaking of necessity very largely of impromptu statements and opinions, cannot be resorted to with any confidence as showing the true intent of Congress in the enactment of statutes, a somewhat different standard obtains with reference to the pronouncements of committees having in charge the preparation of such proposed laws. These committee announcements do not of course carry the weight of a judicial opinion, but are rightly regarded as possessing very considerable value of an explanatory nature regarding legislative intent where the meaning of a statute is obscure."

U. S. v. Trans-Missouri Freight Association (1896), 166 U. S. 290, 318:

> "There is, too, a general acquiescence in the doctrine that debates in Congress are not appropriate sources of information from which to discover the meaning of the language of a statute passed by that body. *United States v. Union Pacific Railroad Company,* 91 U. S. 72, 79; *Aldridge v. Williams,* 3 How. 9, 24, Taney, Chief Justice; *Mitchell v. Great Works Milling & Manufacturing Company,* 2 Story, 648, 653; *Queen v. Hertford College,* 3 Q. B. D. 693, 707.
>
> "The reason is that it is impossible to determine with certainty what construction was put upon an act by the members of a legislative body that passed it by resorting to the speeches of individual members thereof. Those who did not speak may not have agreed with those who did; and those who spoke might differ from each other; the result being that the only proper way to construe a legislative act is from the language used in the act, and, upon occasion, by a resort to the history of the times when it was passed."

Hills v. U. S. (Ct. Cl. 1932), 55 F. (2d) 1001, 1005:

> "Extemporaneous answers to questions propounded in rapid-fire debate in Congress are of little weight, if any, in determining the construction of statutes, but, even if they should be so treated, the quotations which are made from the debates in Congress do not in any way help the defendant's case."

It is apparent even from a casual reading of the discussion quoted by appellants that the real question asked and answered was as to the propriety of granting declaratory relief in the exercise of the jurisdiction created, and that the words "or interested individual employees" were not necessarily considered by Mr. Hartley in his extemporaneous reply. Section 302(a) then provided for jurisdiction in "actions for or proceedings involving a violation of an agreement," language much more reasonably construed as authorizing declaratory relief than the "suits for violation of contracts" which appeared in the bill as finally passed.

Nor are the remarks quoted by the appellants, the only Congressional debates which bear upon this question. On April 25, 1947, Mr. Murray opposing the bill in the House of Representatives said (Congressional Record p. 4153):

> "This Section permits *suits by* and against *a labor organization* representing employees in such industries, in its common name, with money judgments enforceable only against the organization and its assets."

Mr. Smith supporting the bill made the following statement in the House on April 30, 1947 (Congressional Record p. 4410):

> "I come now to Title III, which is very brief and merely provides for *suits by* and against *labor organizations,* and requires that labor organizations as well as employers shall be responsible for carrying out contracts legally entered into as a result of collective bargaining. *That is all Title III does.*"

2. **Even if the Labor-Management Relations Act Should be Held to Confer Jurisdiction Over Suits by Employees Asserting Rights Under Collective Bargaining Contracts, It Does Not Retroactively Confer Jurisdiction Over Pending Suits.**

(a) THE LABOR-MANAGEMENT RELATIONS ACT DOES NOT PURPORT TO AFFECT PENDING CASES AND CANNOT PROPERLY BE CONSTRUED AS GIVING JURISDICTION IN PENDING CASES OVER WHICH THE COURT DID NOT HAVE JURISDICTION WHEN THEY WERE COMMENCED.

This action was commenced on December 7, 1946. The Labor-Management Relations Act of 1947 was enacted on June 23, 1947. Section 301(a) relates only to suits which *"may be brought"* and is therefore expressly applicable only to suits filed after June 23, 1947. A statute of a similar nature, employing this identical language, was held not to affect pending litigation. In *Newell v. Baltimore & Ohio R. Co.,* 181 Fed. 698, plaintiff had filed suit on March 5, 1910, in the Circuit Court in Pennsylvania, where he resided, against his employer, a railway corporation residing in Maryland. The cause of action was for injury arising out of plaintiff's employment in interstate commerce, and consequently there were two bases of federal court jurisdiction; diversity of citizenship, and federal question. The rule in such cases at the time the suit was brought was that the court having jurisdiction was the Circuit Court in the district in which the defendant was a resident. Thus, at the time of the commencement of the action, only the Maryland Circuit Court had jurisdiction.

On April 5, 1910 the Federal Employers' Liability Act was amended to provide that suits of the character here

involved *"may be brought"* in any of three districts. If applicable to pending suits the amendment clearly authorized plaintiff to sue in Pennsylvania. The court dismissed for lack of jurisdiction, and on motion by plaintiff to rescind this order, said (pp. 700-701):

> "The plaintiff insists that jurisdiction should be sustained by reason of the Act of Congress approved April 5, 1910 (Act April 5, 1910, c. 143, 36 Stat. 291), passed to amend the employer's liability act, and particularly by the amendment to section 6, wherein it is provided among other things:
>
> 'Under this act an action *may be brought* in the Circuit Court of the United States in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action.'
>
> The very fact that such enactment was deemed necessary by Congress is persuasive that prior thereto such action could only be brought in accordance with the acts conferring jurisdiction upon the Circuit Courts of the United States, to wit, the act of March 3, 1887 (Act March 3, 1887, c. 373, 24 Stat. 552), as corrected by the act of August 13, 1888 (Act Aug. 13, 1888, c. 866, 25 Stat. 433 [U. S. Comp. Stat. 1901, p. 508],) the material part of which is as follows:
>
> 'No civil suit shall be brought before either of said courts against any person by any original process or proceeding in any other district than that whereof he is an inhabitant, but where the jurisdiction is founded only on the fact that the action is between citizens of different states, suit shall be

brought only in the district of the residence of either the plaintiff or the defendant.'

In addition, the amendment of 1910 does not confer jurisdiction upon pending suits. *The use of the words 'may be brought' clearly indicates that it refers to actions to be commenced after its passage.* In addition, also, it is a general proposition of law that statutes will not be given a retroactive effect or apply to pending cases unless they relate to procedure merely, or are so expressed in the act. As said by Mr. Justice Clifford in Twenty Per Cent Cases, 20 Wall. 187 (22 L. Ed. 339):

'Even though the words of a statute are broad enough in their literal extent to comprehend existing cases, they must yet be construed as applicable only to cases that may hereafter arise, unless the language employed expresses a contrary intention in unequivocal terms.'

I am of the opinion that the amendment of 1910 was not retroactive, and did not confer jurisdiction upon this court over the defendant. Had plaintiff elected to proceed without amendment of his statement or declaration, the benefits which he hoped to have by reason of the employer's liability act, which are unnecessary to be stated, might have been lost to him."

In *Ft. Smith & W. R. Co. v. Blevins* (Okla. 1913), 130 Pac. 525, plaintiff had commenced an action on January 19, 1909 for injuries sustained by him in the sum of $1,999.90 as the result of negligence of the defendant railroad company while plaintiff was in the employ of defendant. On April 5, 1910, the Federal Employer's Liability Act was amended to provide for concurrent

jurisdiction of state and federal courts in actions arising under the Act. On February 15, 1911, plaintiff amended his complaint to charge damages in the sum of $12,250.00. Defendant thereupon filed a petition to remove the cause to the United States Circuit Court. The cause was properly removed unless the amendment to the Federal Employer's Liability Act deprived defendant of such right of removal. The pertinent portion of said amendment read as follows:

> "Section 6. That no action shall be maintained under this Act unless commenced within two years from the day the cause of action accrued.
>
> "Under this Act an action *may be brought* in a circuit court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action. The jurisdiction of the courts of the United States under this Act *shall be concurrent with that of the courts of the several States, and no case arising under this Act and brought in any state court of competent jurisdiction shall be removed to any court of the United States.*" (Italics ours.)

The trial court refused to make an order of removal. Upon appeal, the Supreme Court reversed the trial court, holding that the 1910 amendment did not apply to cases brought before its effective date. The court cited and quoted at length from *Newell v. Baltimore and Ohio R. Co.*, and summarized its own holding in the syllabus by the court as follows:

> "Act April 5, 1910, c. 143, 36 Stat. 291 (U. S. Comp. St. Supp. 1911, p. 1324) amending section 6 of the Employer's Liability Act (Act April 22,

> 1908, c. 149, 35 Stat. 66 [U. S. Comp. St. Supp. 1909, p. 1173]), so as to provide that the jurisdiction of the courts of the United States under said act shall be concurrent with that of the courts of the several states, and no case arising thereunder and brought in any state court of competent jurisdiction shall be removed to any court of the United States, has no application to actions brought prior to the amendment."

Even without such affirmative language requiring a prospective operation only, Section 301(a), in the absence of language requiring a retrospective application, should be construed as applying only to suits filed subsequent to its effective date.

> "Retrospective or retroactive legislation is not favored. Hence, it is a well settled and fundamental rule of statutory construction, variously stated, that all statutes are to be construed as having only a prospective operation, and not as operating retrospectively. It is equally well settled as a fundamental rule of statutory construction supported and established by numerous judicial decisions that statutes are not to be construed as having a retroactive effect."
>
> 59 Corpus Juris 1159.

This principle is also stated and applied in the *Newell* and *Fort Smith* cases, *supra.*

(b) Jurisdiction Is Determined According to the Law and the Facts as They Exist at the Time Suit Is Commenced, and Is Not Affected by Later Developments.

"Jurisdiction is to be determined as of the time the suit was commenced."

21 Corpus Juris Secundum p. 171.

Davidsburgh v. Knickerbocker Life Ins. Co. (1882), 90 N. Y. 526, 528, 530:

"It is conceded by the appellant's counsel that this action was commenced on the 19th of February, 1872. The question upon this appeal, therefore, is to be determined by the law in force at that time, viz.: The act of 1870 (Chap. 470), entitled 'An act to increase the number of judges of the City Court of Brooklyn, and to regulate the civil and criminal jurisdiction thereof,' and not under the Code of Civil Procedure, for that statute was not then in force, nor are its provisions made applicable to actions theretofore pending" (p. 528).

. . . . . .

"The court below, therefore, committed no legal error in declining jurisdiction in this instance, and the judgment appealed from should be affirmed" (p. 530).

Pacific Telephone & Telegraph Co. v. Seattle (1926), 14 F. (2d) 877, at 879:

"The city contends that, all franchises having expired, the plaintiff is now a trespasser upon the

streets of the city, and that it has an adequate remedy at law, for damages accruing, and that the plaintiff, being a trespasser, may not invoke equity jurisdiction. This action was begun before Ordinance No. 6498 expired by limitation. Plaintiff, therefore, was not a trespasser at the inception of this suit (citing cases), and the jurisdiction is determined as of the time the suit was commenced."

Fisher Flouring Mills v. Vierhus (1935), 78 F. (2d) 889, at 892:

"It would be a strange procedure for a court of chancery to measure the adequacy of a remedy at law, not by what the law is at the time the equity suit is filed, but by certain nebulous conjectures of what the law may be at some future time. 'Jurisdiction is determined as of the time the suit was commenced.'"

Pugh v. Flannery (La. 1922), 92 So. 699, at 701:

"After the filing of an exception to the jurisdiction, nothing can be done to change or affect the issue pending its disposition by the court."

Minneapolis Ry. v. Peoria Ry. (1926), 270 U. S. 580, at 586:

"The jurisdiction of the lower court depends upon the state of things existing at the time the suit was brought."

IV.

Jurisdiction of the District Court Cannot Be Predicated on the Claim That This Case Arises Under the Fifth and Fourteenth Amendments.

In Paragraph VIII of plaintiffs' complaint, it is alleged that jurisdiction in this case depends upon the Fifth and Fourteenth Amendments to the United States Constitution. [Tr. of R. p. 7.] At page 48 of their brief, appellants contend that their rights under the purported collective bargaining agreement are guaranteed by the Fifth and Fourteenth Amendments.

The Fifth and Fourteenth Amendments do not furnish any basis of jurisdiction in this case. It is well settled that the Fourteenth Amendment prohibits state action, not individual action (*The Civil Rights Cases,* 109 U. S. 3; *Virginia v. Rives,* 100 U. S. 313, 318; *U. S. v. Harris,* 106 U. S. 629, 639); and that the Fifth Amendment prohibits Federal action, not individual action (*Corrigan v. Buckley,* 271 U. S. 323, 330). No allegation is made in the complaint that the Motion Picture Companies, in construing and carrying out their purported collective bargaining agreement with the Carpenters Union and the IATSE were acting as state or federal government representatives or were acting under color of any state or federal statute. The allegation is that defendant Motion Picture Companies have misconstrued the meaning of the purported collective bargaining agreement and have acted in accordance with such misconstruction. Such action is individual action and cannot possibly constitute a violation of either the Fifth or Fourteenth Amendments.

V.

Jurisdiction of the District Court Cannot Be Predicated Upon the Claim That This Case Arises Under the Civil Rights Statutes.

In Paragraph VIII of plaintiffs' complaint it is alleged that jurisdiction depends upon 8 U. S. C. A. 43, 28 U. S. C. A. 41 (14), and 28 U. S. C. A. 729. [Tr. of R. p. 7.] At page 53 and following of their brief, appellants argue that by employing IATSE members to erect sets on stages appellee Motion Picture Companies violated their purported collective bargaining agreement with the Carpenters Union and the IATSE and thus deprived members of the Carpenters Union of civil rights.

8 U. S. C. A. 43 and 28 U. S. C. A. 41(14) provide that where a defendant, under color of any law, statute, ordinance, regulation, custom or usage of any state deprives a plaintiff of certain rights, redress may be had therefor in the federal courts. 28 U. S. C. A. 729 establishes the procedure to be followed in the federal courts in actions brought under these statutes. The liability created by these statutes is limited to acts of a defendant under color of state legislation (*California Oil and Gas Co. v. Miller,* 96 Fed. 12, 22.) There is no allegation that in construing the purported collective bargaining agreement and in employing members of the IATSE to erect sets on stages the Motion Picture Companies acted under color of any state legislation. In the absence of such allegation, 8 U. S. C. A. 43 and 28 U. S. C. A.

41(14) did not confer jurisdiction upon the District Court in this case.

In Paragraph VIII of plaintiff's complaint, it is alleged that jurisdiction depends upon 8 U. S. C. A. 47 and 28 U. S. C. A. 41(12). At page 53 and following of their brief, appellants allege that these statutes conferred jurisdiction upon the District Court in this case. These statutes protect persons from violation of their rights by state action, not by individual action (*Love v. Chandler* (C. C. A. 8), 124 F. (2d) 785, 786-7; *Simpson v. Geary,* 204 Fed. 507; *Mitchell v. Greenough,* (C. C. A. 9), 100 F. (2d) 184, 187. The allegations of plaintiff's complaint are that appellee Motion Picture Companies have employed members of the IATSE instead of members of the Carpenters Union to erect sets on stages, and that such action on their part is a violation of a purported collective bargaining agreement. Such alleged wrongful action by appellee Motion Picture Companies is individual action on their part and is not state action. There is no allegation that plaintiffs have suffered by reason of any state action. State action is in no way involved in this case. In the absence of any allegation that plaintiffs have suffered by reason of state action, jurisdiction in this case cannot depend upon 8 U. S. C. A. 47 or 28 U. S. C. A. 41(12).

VI.

Plaintiffs Cannot Rely Upon the Provisions of the Sherman Act to Establish Jurisdiction in This Case.

1. The Amended Complaint Contains No Allegations Even Purporting to Charge a Combination or Conspiracy in Restraint of Trade.

(a) The First Cause of Action Contains No Such Allegations.

As stated by plaintiffs in the amended complaint, the controversy involved in the first cause of action is as follows:

> "The controversy alleged herein arises from the acts and conduct of defendants I.A.T.S.E., Walsh, and Brewer in claiming, demanding, and enforcing, by coercion and other devices, including the threat to close every motion picture theatre on the continent by calling out on strike all moving picture projectionists belonging to said union, their claim to the right to provide members of I.A.T.S.E. and non-union 'permittees' of said union to do the work allocated to plaintiffs by the aforesaid Decision and Award and the clarification thereof, by historical custom and usage, and by the terms and provisions of agreements alleged hereinbefore, and the accession to said demands and the employment of members and 'permittees' of the I.A.T.S.E. to do the work of plaintiffs by defendant Motion Picture Companies." [Tr. of R. p. 20.]

This conduct is alleged to be in violation of certain contracts and decisions, findings and awards in arbitration. It is not alleged to have had the purpose of nor the result of restraining trade or commerce among the states either by controlling prices or lessening competition or in any other manner whatsoever.

(b) The Second Cause of Action Contains No Such Allegations.

The second cause of action, in the language of the amended complaint, charges a conspiracy:

> ". . . to deprive plaintiffs of having and exercising and to injure plaintiffs in their persons and property in the *exercise of, rights, privileges and immunities secured to plaintiffs by the Constitution and laws of the United States,* in that said defendants conspired and continue to conspire each with the other to deprive plaintiffs of the right and privilege to work at their chosen vocations, to-wit: studio carpenters, and to interfere with, obstruct, impede, and hinder said plaintiffs in the free and unhampered exercise of said right and privilege; that said conspiracy has resulted and continues to result in great damages to plaintiffs in the loss of wages." [Tr. of R. pp. 22-23.]

There are no allegations charging a concurrent purpose to control prices, eliminate competition or otherwise restrain trade and no results of such conspiracy are set forth other than that plaintiffs have suffered loss of wages.

(c) Lacking Any Allegations That Either the Purpose or the Result of the Combination and Conspiracy Charged Is to Effect "Competition in the Marketing of Goods and Services" Neither the First nor the Second Cause of Action Raises Any Issue Under the Sherman Act.

If any of the allegations of the complaint charge an attempt to establish or the establishment of a monopoly of any sort, the monopoly involved is a labor monopoly and is therefore not prohibited by the Sherman Act which concerns only combinations which affect "competition in the marketing of goods or services."

In *Apex Hosiery Co. v. Leader* (1940), 310 U. S. 469, the Court, holding that a sitdown strike was not a Sherman Act violation, said:

> "It was another and quite a different evil at which the Sherman Act was aimed. It was enacted in the era of 'trusts' and of 'combinations' of businesses and of capital organized and directed to control of the market by suppression of competition in the marketing of goods and services, the monopolistic tendency of which had become a matter of public concern. The end sought was the prevention of restraints to free competition in business and commercial transactions which tended to *restrict production, raise prices* or *otherwise control the market to the detriment of purchasers or consumers of goods and services,* all of which had come to be regarded as a special form of public injury." (pp. 491-493.)

"A combination of employees necessarily restrains competition among themselves in the sale of their services to the employer; yet such a combination was not considered an illegal restraint of trade at common law when the Sherman Act was adopted, either because it was not thought to be unreasonable or because it was not deemed a 'restraint of trade.' Since the enactment of the declaration in §6 of the Clayton Act that 'the labor of a human being is not a commodity or article of commerce . . . nor shall such [labor] organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in the restraint of trade under the anti-trust laws,' it would seem plain that restraints on the sale of the employee's services to the employer, *however much they curtail the competition among employees, are not in themselves combinations or conspiracies in restraint of trade or commerce* under the Sherman Act." (pp. 502-503.)

The question of union immunity involved in *Allan Bradley Co. v. Union* (1945), 325 U. S. 797, and similar cases is in no way raised by the amended complaint in the absence of the statement of any facts therein even intimating that "understandings, looking not merely to terms and conditions of employment but also to price and market control," as the court described the agreements in that case, are involved.

That plaintiffs did not consider any Sherman Act issue to be raised by the amended complaint is indicated by the fact that though numerous Federal statutes are alleged therein to be the basis of the Court's jurisdiction, the Sherman Act is not mentioned.

2. **Having Failed to Include a Statement in the Complaint to the Effect That the Sherman Act Was a Ground of Jurisdiction, as Required by Rule 8(a)(1) of the Federal Rules of Civil Procedure, Appellants Are Now Precluded From Attacking the District Court's Ruling if in Fact the Grouds of Jurisdiction Stated Did Not, and It Is Respectfully Submitted That They Did Not, Show Jurisdiction in the Court.**

Appellants set forth the grounds of jurisdiction in Paragraph VIII of the amended complaint in the following manner:

> "Jurisdiction of this Court is vested by virtue of Section 400, Title 28, United States Code Annotated; Sections 41(1), 41(8), 41(12), and 41(14), Title 28, United States Code Annotated; Section 729, Title 28, United States Code Annotated; Sections 43 and 47(3), Title 8, United States Code Annotated; Section 157, Title 29, United States Code Annotated; and the Constitution of the United States, Amendments V and XIV." [Tr. of R. p. 7.]

Conspicuously absent from the long list of Federal statutes and Constitutional amendments cited is the Sherman Act. Rule 8(a)(1) of the Federal Rules requires that the complaint contain "(1) a short and plain statement of the grounds upon which the court's jurisdiction depends . . ." Having failed to invoke the jurisdiction of the District Court in the manner prescribed by this rule with respect to this ground of jurisdiction, now first raised on appeal, appellants cannot now assert that the District Court erred in failing to sustain jurisdiction on this ground.

VII.

The Federal Declaratory Judgment Act Is Applicable Only to Cases Within the Jurisdiction of the Federal Court; It Does Not Confer Jurisdiction Where None Otherwise Exists.

At pages 31 to 38 of appellant's brief it is contended that the jurisdiction of the District Court in this case is based on the Declaratory Judgment Act. It is well settled that the Declaratory Judgment Act is a procedural statute applicable to cases within the jurisdiction of Federal Courts and not a statute conferring jurisdiction.

Aetna Casualty & Surety Co. v. Quarles (C. C. A. 4), 92 F. (2d) 321, 323:

> "The federal Declaratory Judgment Act (Jud. Code §274d, 28 U. S. C. A. §400) is not one which adds to the jurisdiction of the court, but is a procedural statute which provides an additional remedy for use in those cases and controversies of which the federal courts already have jurisdiction."

In *Mississippi Power & Light Co. v. City of Jackson* (C. C. A. 5), 116 F. (2d) 924, cited by appellants, the court said:

> "While the declaratory judgment act has not added to the jurisdiction of the federal courts, it has added a greatly valuable procedure of a highly remedial nature."

See also:

Samuel Goldwyn, Inc. v. United Artists Corporation (C. C. A. 3), 113 F. (2d) 703, 708;

McCarty v. Hollis (C. C. A. 10), 120 F. (2d) 540, 542;

Home Ins. Co. v. Trotter (C. C. A. 8), 130 F. (2d) 800.

Appellants must look to some statute, other than the Declaratory Judgment Act, on which to base a claim of jurisdiction in the District Court.

Conclusion.

It is respectfully submitted that the District Court correctly decided that in the absence of diversity of citizenship, it was without jurisdiction to declare the rights and duties of the parties to the purported agreements described in plaintiffs' complaint.

Respectfully submitted,

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